

ORIGINAL

Cause No. 2023DCV1135  
August 30, 2024

## REPORTER'S RECORD

VOLUME 1 OF 1 VOLUME

TRIAL COURT CAUSE NO. 2023DCV1135

ELIZABETH CARRIZAL	)	IN COUNTY COURT AT LAW
	)	
VS.	)	NUMBER THREE
	)	
STATE OF TEXAS - HEALTH AND	)	
HUMAN SERVICES COMMISSIONS	)	EL PASO COUNTY, TEXAS

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HEARING ON DEFENDANT'S PLEA TO THE JURISDICTION AND PLAINTIFF'S  
MOTION TO COMPEL

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On the 30th day of August, 2024, the following proceedings came on to be held in the above-titled and numbered cause before the Honorable Melissa Baeza, Judge Presiding, held in El Paso, El Paso County, Texas, via Zoom teleconference.

Proceedings reported by computerized stenotype machine utilizing realtime transcription capability.

DEFENDANT'S  
EXHIBIT**B**

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I N D E X

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1 (Open court)

2 THE COURT: The Court calls 2023DCV1135, Elizabeth  
3 Carrizal vs. State of Texas - Health And Human Services  
4 Commission. Announcement of Counsel, please.

10:00:23 5 MR. WELTGE: Good morning, Your Honor. Evan Weltge  
6 for HHSC.

7 THE COURT: Thank you.

8 MR. ANDERSON: Michael Anderson for the Plaintiff.

9 THE COURT: Thank you. And we're here this morning  
10:00:32 10 on the motion -- I'm sorry -- the Plea to the Jurisdiction and  
11 then also Plaintiff's Motion to Compel.

12 MR. ANDERSON: Yes.

13 MR. WELTGE: That's correct.

14 THE COURT: Let's proceed with the plea.

10:00:44 15 MR. WELTGE: Yes, Your Honor. This actually may be  
16 a very quick hearing this morning. The Defendant filed their  
17 Plea to the Jurisdiction, I believe, on August 1st. Plaintiff  
18 filed a Second Amended Complaint yesterday which, in my mind,  
19 would moot this hearing on the PTJ which dealt specifically with  
10:01:01 20 the First Amended Petition.

21 So Defendant would request, Your Honor -- I don't  
22 necessarily want to -- I don't know if withdrawing the PTJ is the  
23 proper procedure but just taking time to now evaluate the Second  
24 Amended Complaint and determine whether or not another PTJ is due  
10:01:20 25 to be filed at some point soon.

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10:01:23 1 THE COURT: So am I understanding correctly that  
2 Plaintiff filed a Second Amended Petition on August 29th?

3 MR. WELTGE: Yes, Your Honor.

4 THE COURT: Okay.

10:01:32 5 MR. ANDERSON: (Moving head up and down).

6 THE COURT: Mr. Anderson, I take it you're not  
7 opposed to resetting if and when Defendant decides to reassert  
8 its plea based on Plaintiff's Second Amended Petition?

9 MR. ANDERSON: Correct, Your Honor.

10:01:44 10 THE COURT: Okay. Very good. Then we'll reset the  
11 plea to the jurisdiction if and when needed; and then if a  
12 hearing is needed, then I'll ask you all to reach out to the  
13 Court for availability and to confer on the dates.

14 MR. WELTGE: Thank you, Your Honor.

10:01:58 15 Judge, I don't know -- this may be something we  
16 want to take up now. I know, in addition to our PTJ that was  
17 filed at the beginning of August, we filed a Motion for  
18 Protection and Stay of Discovery. Obviously, we don't have a  
19 hearing today on the request to stay discovery. But to the  
10:02:18 20 extent, obviously, that Defendant would anticipate filing another  
21 plea to the jurisdiction, would the Court prefer another motion  
22 for automatic stay of discovery with that plea or keep this one  
23 on file?

24 THE COURT: Let me ask Mr. Anderson's position on  
10:02:36 25 the Motion to Compel that was also set today in light of where we

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10:02:40 1 are with the Plea to the Jurisdiction.

2 MR. ANDERSON: We were going to move forward with  
3 the Motion to Compel, Your Honor; so we see no reason for a stay  
4 at this time. If the plea is being -- again, I don't know if  
10:02:53 5 "withdrawn" is the right word, but if we're not going to move  
6 forward with the plea right now, we oppose a stay of any  
7 discovery.

8 If the Defendant wants to file a second plea or  
9 decides he wants to move forward with the first plea, however  
10:03:06 10 it's done, if he wants to reassert the motion for stay, we can  
11 take that up as a matter then. I don't think a stay is  
12 appropriate right now if we're not moving forward with the Plea  
13 to the Jurisdiction.

14 THE COURT: Response?

10:03:20 15 MR. WELTGE: I don't have a problem with that, Your  
16 Honor.

17 THE COURT: Okay. All right.

18 Mr. Anderson, you may proceed.

19 MR. ANDERSON: Yes. Your Honor, we had a hearing  
10:03:33 20 back on November 30th, you may recall, about Plaintiff's First  
21 Motion to Compel. And there was -- I don't believe there was a  
22 written order from the Court on that. There was an agreement  
23 that was read into the record by Mr. Chavez and the prior counsel  
24 for the Defendant.

10:03:52 25 Mr. Weltge was not counsel at the time. There was

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10:03:58 1 an agreement on the record where the Defendant agreed to produce  
2 documents responsive to certain discovery requests, including  
3 videos and recordings that were part of the grievance process and  
4 the investigation into our client's termination. Those have not  
10:04:13 5 been produced yet.

6 I know that there was a discussion of a possible  
7 protective order at the time. But the bounds of one was not  
8 agreed upon. And the State has not submitted one showing what it  
9 is they want in their protective order. They've simply refused  
10:04:30 10 to -- to submit any of the documents, produce the videos or the  
11 audio. They produced written documents, but this dispute is  
12 specifically on the video recordings that were at issue.

13 Those video recordings go to the reason for the  
14 Defendant's termination of the Plaintiff; so they're an issue in  
10:04:48 15 this case. So we ask the Court to compel the production of those  
16 videos, in particular, because much of the Plea to the  
17 Jurisdiction, which is now mooted, was based on an allegation  
18 that a grievance did not -- pre-suit grievance notice did not  
19 deal with the whistleblower activity. Those videos go straight  
10:05:10 20 to that issue, and that's why they need to be reviewed, Your  
21 Honor.

22 MR. WELTGE: Judge, I think this will be a quick  
23 issue that we can resolve easily.

24 Mr. Anderson is correct. So there is a hearing --  
10:05:25 25 correct in a certain respect, correct that there was a hearing on

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10:05:29 1 November 30th with the former counsel AAG Gifford. I am not  
2 aware of any -- anything read into the record, I'm not aware of  
3 any agreement as to a protective order or surveillance videos or  
4 audio recordings, the records that Plaintiff seeks in his -- her  
10:05:46 5 motion to compel -- excuse me. I'm not aware of any agreement in  
6 that respect.

7 Ms. Gifford, we -- the Defendant produced 7,000  
8 pages of documents on December 5th of last year. Then  
9 Ms. Gifford shortly after left employment at the Attorney  
10:06:01 10 General's Office. I jumped on this case and filed a Notice of  
11 Appearance in April.

12 Mr. Anderson's firm reached out to me -- I'm  
13 sorry -- in February. But in April Mr. Anderson's firm reached  
14 out to me concerning the discovery production of December 5th.  
10:06:17 15 At no time in April did Mr. Anderson or Mr. Chavez mention a  
16 protective order or surveillance videos or audio recordings. And  
17 then since that time it has been -- there's been complete silence  
18 and no conference.

19 To make this easy for the Court and to make this  
10:06:33 20 easy for Mr. Anderson, the records that he's seeking and the  
21 surveillance videos and the audio recordings, to the extent they  
22 exist, are confidential and statutorily protected and a  
23 protective order is required in order for my client to produce  
24 those records.

10:06:47 25 My client has no problem producing those records as



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10:06:50 1 long as there's a protective order agreed to and on file. We can  
2 get that protective order drafted. My client would need to  
3 review it, and then we can circulate that to Plaintiff's Counsel  
4 hopefully next week. I don't see why it wouldn't be next week.

10:07:03 5 And provided that Plaintiff's Counsel would agree to that  
6 protective order, we would get it on file; and those documents,  
7 those records, could be produced to them. But we need a  
8 protective order on file.

9 THE COURT: Mr. Anderson?

10:07:18 10 MR. ANDERSON: Your Honor, we're just concerned  
11 that, you know, the State has -- they know what they want in  
12 their protective order and they haven't sent it since November.  
13 We're able to have that discussion if it's required by statute,  
14 but we need some sort of movement on the production of the  
10:07:34 15 videos, especially this close to trial.

16 MR. WELTGE: The records, again, are statutorily  
17 protected. They will be produced subject to a protective order.  
18 So to the extent that the parties agree on a protective order and  
19 one is filed, those records will be produced.

10:07:49 20 THE COURT: So why hasn't the protective order,  
21 whatever form that the Attorney General's Office prefers, why  
22 hasn't this been provided to Counsel?

23 MR. WELTGE: I had no idea that there was any  
24 discussion of a protective order in November, on November 30th or  
10:08:01 25 in December before Ms. Gifford left. Mr. Anderson nor Mr. Chavez

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10:08:05 1 ever reached out to me or conferred on the need for a protective  
2 order.

3 So my first knowledge of a need for protective  
4 order was this Motion to Compel that we're talking about now.

10:08:16 5 And, again, Mr. Anderson nor Mr. Chavez have reached out in eight  
6 months to discuss that or confer on a protective order. I'm  
7 happy to get one on file, but we need to get one on file for  
8 those records to be produced.

9 THE COURT: My notes show that on the November 30th  
10:08:33 10 hearing the agreement was put on the record. I don't have any  
11 more of the terms of the agreement other than just that it was on  
12 the record; so I don't recall whether a protective order was  
13 addressed at that hearing or not. But if that's an issue, I  
14 think you all might want to explore what was put on the record if  
10:08:51 15 it's -- you know, if the notes aren't clear on your end having  
16 come into this suit kind of after that hearing took place.

17 But I think everyone knows where we need to go.  
18 Because we've already had a motion to compel hearing, if there  
19 are outstanding issues, then I think the rules are still in play,  
10:09:08 20 Mr. Anderson, that the parties must confer before coming to the  
21 Court. So I'm a little disappointed to hear that you all haven't  
22 conferred on what the status is of the documents, what's needed,  
23 what's the preferred form for one party versus the other.

24 If the parties can't agree on a form of protective  
10:09:25 25 order, if a protective order is required for protection, then I

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10:09:29 1 would recommend that the parties look to the Western District.  
2 The Western District has a form that's, you know, pretty  
3 straightforward. So I would suggest that if the parties can't  
4 agree, then the Court's inclined to enter one that's very similar  
10:09:44 5 to the form provided online by the Western District of Texas.

6 So what I'm inclined to do is maybe reset this  
7 hearing on the Motion to Compel to give you all time to talk, to  
8 review the protective orders, and then to come to a resolution on  
9 timing of the production of the videos and any other documents or  
10:10:08 10 items that are responsive to the request.

11 MR. WELTGE: That works, Your Honor.

12 MR. ANDERSON: Yes. And, Your Honor, we believe  
13 the parties have sufficiently conferred based on the  
14 November 30th meeting, but we're not opposed to conferring again.

10:10:25 15 THE COURT: Sure. And I think the issue there is  
16 just that there was a change in counsel. I'm not telling you how  
17 to do your job, but I would expect, you know, constant  
18 communication: Where are we? What's the status? I've asked for  
19 this. You haven't provided this.

10:10:38 20 You know, that's kind of what I would like to see.  
21 And I understand if Defendant provided production of, you know,  
22 multiple items and so you were in the process of reviewing it and  
23 maybe hadn't gotten back to them. But it does seem odd that from  
24 the time of the hearing until now significant time has passed and  
10:10:58 25 now we're kind of on the heels of the pretrial hearing. I

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10:11:00 1 believe that's September 19th. Is that right?

2 MR. WELTGE: I believe that's accurate, Your Honor.  
3 I need to check my calendar. But I also anticipate working with  
4 Plaintiff's Counsel on resetting that trial.

10:11:14 5 THE COURT: Why is that?

6 MR. WELTGE: Both parties have -- I assume  
7 Mr. Anderson will want to take depositions. I know that I need  
8 the deposition of his client.

9 But also to the extent that we're going to have  
10:11:25 10 another PTJ on file, that PTJ will be accompanied by a Motion for  
11 Stay of Discovery and there are jurisdictional issues potentially  
12 at play that would need to be resolved before a trial.

13 THE COURT: Okay. It sounds like you all have a  
14 lot of work to do. We're already set for that pretrial hearing  
10:11:44 15 September 19th. So let's just keep that date in place for this  
16 Motion to Compel: September 19th at 11:00.

17 That pretrial hearing is in person because we do  
18 have in-person pretrial hearings. But I can convert it to a Zoom  
19 for now, but I think you all need to get whatever documents on  
10:12:13 20 file for the Court to consider those. And specifically if both  
21 parties are intending on continuing the trial, then let's take  
22 care of that sooner rather than later.

23 MR. WELTGE: Yes, Your Honor.

24 THE COURT: Okay. And then preferably have the  
10:12:25 25 September 19th 11 a.m. Zoom hearing.

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10:12:29 1 MR. ANDERSON: Yes, Your Honor.

2 MR. WELTGE: Before we leave, Your Honor, I just

3 want to ask Mr. Anderson a question.

4 Mr. Anderson, are you available after this hearing

10:12:39 5 just for a quick phone call?

6 MR. ANDERSON: Yes, I am.

7 MR. WELTGE: Okay. I'll give you a call.

8 MR. ANDERSON: Okay.

9 THE COURT: All right. Anything else, Counsel?

10:12:45 10 MR. WELTGE: Nothing from Defendant, Your Honor.

11 MR. ANDERSON: Nothing from Plaintiff.

12 THE COURT: Okay. Then we're adjourned. Thank you

13 both very much. Let me just say really quickly: If I don't --

14 yeah. I think we'll probably just file another Order Setting

10:12:58 15 Hearing and that will have the Zoom link for September 19th. You

16 probably originally didn't get one for that date, but we'll file

17 an Amended Order so there is a Zoom link available.

18 MR. WELTGE: Thank you, Your Honor.

19 MR. ANDERSON: Thank you.

10:13:10 20 THE COURT: Thank you both. Have a great weekend.

21 MR. WELTGE: You too.

22 *(Proceedings adjourned at 10:13 a.m.)*

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Reporter's Certificate*

1 THE STATE OF TEXAS )

2 COUNTY OF EL PASO )

3 I, Debora Lea Lee, Official Court Reporter in and for  
4 the Council of Judges of El Paso County, State of Texas, do  
5 hereby certify that the above and foregoing contains a full, true  
6 and correct transcription of all portions of evidence and other  
7 proceedings requested in writing by counsel for the parties to be  
8 included in this volume of the Reporter's Record, in the  
9 above-styled and numbered cause, all of which occurred in open  
10 court or in chambers and were reported by me.

11 I further certify that this Reporter's Record of the  
12 proceedings truly and correctly reflects the exhibits, if any,  
13 admitted by the respective parties.

14 I further certify that the total cost for the  
15 preparation of this Reporter's Record is \$ 77.00 and will be paid  
16 by the Office of the Attorney General of Texas.

17 WITNESS MY OFFICIAL HAND on this, the 4th of February,  
18 2025.

19 /s/Debora Lea Lee

20 DEBORA LEA LEE, RPR, Texas CSR# 1979  
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MR. ANDERSON: [13] 4/8 4/12 5/5 5/9 6/2 6/19 9/10 11/12 13/1 13/6 13/8 13/11 13/19 MR. WELTGE: [18] THE COURT: [21]	11/14 agree [4] 9/5 9/18 10/24 11/4 agreed [3] 7/1 7/8 9/1 agreement [6] 6/22 7/1 8/3 8/5 10/10 10/11 all [10] 5/12 6/17 10/14 10/21 11/7 12/13 12/19 13/9 14/6 14/9 allegation [1] 7/17 already [2] 10/18 12/14 also [4] 4/11 5/25 12/3 12/9 am [3] 5/1 8/1 13/6 Amended [6] 4/18 4/20 4/24 5/2 5/8 13/17 Anderson [13] 4/8 5/6 6/18 7/24 8/15 8/20 9/9 9/25 10/5 10/20 12/7 13/3 13/4 Anderson's [3] 5/24 8/12 8/13 Announcement [1] 4/4 another [5] 4/24 5/20 5/21 12/10 13/14 anticipate [2] 5/20 12/3 Antonio [1] 14/23 any [9] 6/6 7/10 8/2 8/3 8/5 9/23 10/10 11/9 14/12 anything [2] 8/2 13/9 Appearance [1] 8/11 appropriate [1] 6/12 April [3] 8/11 8/13 8/15 are [10] 6/1 8/22 9/16 10/19 10/19 11/10 11/18 12/11 12/21 13/4 aren't [1] 10/15 as [4] 6/11 8/3 8/25 9/1 ask [4] 5/12 5/24 7/15 13/3 asked [1] 11/18 assume [1] 12/6 Attorney [3] 8/9 9/21 14/16 audio [4] 7/11 8/4 8/16 8/21 August [3] 4/17 5/2 5/17 August 29th [1] 5/2 automatic [1] 5/22 availability [1] 5/13 available [2] 13/4 13/17 aware [3] 8/2 8/2 8/5	being [1] 6/4 believe [5] 4/17 6/21 11/12 12/1 12/2 both [4] 12/6 12/20 13/13 13/20 bounds [1] 7/7 <b>C</b> calendar [1] 12/3 call [2] 13/5 13/7 calls [1] 4/2 can [5] 6/10 7/23 9/1 9/3 12/18 can't [2] 10/24 11/3 care [1] 12/22 Carrizal [1] 4/3 case [2] 7/15 8/10 cause [1] 14/9 certain [2] 7/2 7/25 certify [3] 14/5 14/11 14/14 chambers [1] 14/10 change [1] 11/16 Chavez [4] 6/23 8/15 9/25 10/5 check [1] 12/3 circulate [1] 9/3 clear [1] 10/15 client [4] 8/23 8/25 9/2 12/8 client's [1] 7/4 close [1] 9/15 come [2] 10/16 11/8 coming [1] 10/20 Commission [1] 4/4 communication [1] 11/18 compel [10] 4/11 5/25 6/3 6/21 7/15 8/5 10/4 10/18 11/7 12/16 Complaint [2] 4/18 4/24 complete [1] 8/17 concerned [1] 9/10 concerning [1] 8/14 confer [3] 5/13 10/6 10/20 conference [1] 8/18 conferred [3] 10/1 10/22 11/13 conferring [1] 11/14 confidential [1] 8/22 consider [1] 12/20 constant [1] 11/17 contains [1] 14/5 continuing [1] 12/21 convert [1] 12/18 correct [6] 4/13 5/9 7/24 7/25 7/25 14/6 correctly [2] 5/1 14/12 cost [1] 14/14 could [1] 9/7 Council [2] 14/4 14/22 counsel [11] 4/4 6/23 6/25 8/1 9/3 9/5 9/22 11/16 12/4 13/9 14/7 COUNTY [3] 14/2 14/4 14/22 court [12] 4/1 4/2 5/13 5/21 6/22 7/15 8/19	10/21 12/20 14/3 14/10 14/21 Court's [1] 11/4 CSR [1] 14/20 <b>D</b> date [3] 12/15 13/16 14/21 dates [1] 5/13 de.lee [1] 14/24 deal [1] 7/19 dealt [1] 4/19 Debora [3] 14/3 14/19 14/20 December [3] 8/8 8/14 9/25 December 5th [2] 8/8 8/14 decides [2] 5/7 6/9 Defendant [10] 4/16 4/21 5/7 5/20 6/8 6/24 7/1 8/7 11/21 13/10 Defendant's [1] 7/14 deposition [1] 12/8 depositions [1] 12/7 determine [1] 4/24 did [3] 7/18 7/18 8/15 didn't [1] 13/16 disappointed [1] 10/21 discovery [7] 5/18 5/19 5/22 6/7 7/2 8/14 12/11 discuss [1] 10/6 discussion [3] 7/6 9/13 9/24 dispute [1] 7/11 District [3] 11/1 11/2 11/5 do [5] 11/6 11/17 12/14 12/17 14/4 documents [8] 7/2 7/10 7/11 8/8 9/6 10/22 11/9 12/19 does [1] 11/23 don't [12] 4/21 4/22 5/15 5/18 6/4 6/11 6/15 6/21 9/4 10/10 10/12 13/13 done [1] 6/10 down [1] 5/5 drafted [1] 9/2 due [1] 4/24 <b>E</b> easily [1] 7/23 easy [2] 8/19 8/20 eight [1] 10/5 EL [4] 14/2 14/4 14/22 14/23 Elizabeth [1] 4/2 else [1] 13/9 employment [1] 8/9 end [1] 10/15 enter [1] 11/4 epcountytexas.gov [1] 14/24 especially [1] 9/15 evaluate [1] 4/23 Evan [1] 4/5 ever [1] 10/1	everyone [1] 10/17 evidence [1] 14/6 excuse [1] 8/5 exhibits [1] 14/12 exist [1] 8/22 expect [1] 11/17 Expiration [1] 14/21 explore [1] 10/14 Ext [1] 14/24 extent [4] 5/20 8/21 9/18 12/9 <b>F</b> February [2] 8/13 14/17 file [11] 5/23 6/8 9/1 9/6 9/8 10/7 10/7 12/10 12/20 13/14 13/16 filed [8] 4/16 4/18 4/25 5/2 5/17 5/17 8/10 9/19 filing [1] 5/20 firm [2] 8/12 8/13 first [4] 4/20 6/9 6/20 10/3 foregoing [1] 14/5 form [5] 9/21 10/23 10/24 11/2 11/5 former [1] 8/1 forward [4] 6/2 6/6 6/9 6/12 full [1] 14/5 further [2] 14/11 14/14 <b>G</b> General [1] 14/16 General's [2] 8/10 9/21 get [6] 9/2 9/6 10/7 10/7 12/19 13/16 Gifford [4] 8/1 8/7 8/9 9/25 give [2] 11/7 13/7 go [3] 7/13 7/19 10/17 going [3] 6/2 6/5 12/9 good [2] 4/5 5/10 gotten [1] 11/23 great [1] 13/20 grievance [3] 7/3 7/18 7/18 <b>H</b> had [3] 6/19 9/23 10/18 hadn't [1] 11/23 HAND [1] 14/17 happy [1] 10/7 has [6] 7/8 8/17 8/25 9/11 11/2 11/24 hasn't [2] 9/20 9/22 have [14] 5/18 6/15 7/4 9/13 10/5 10/10 11/13 12/6 12/9 12/13 12/18 12/24 13/15 13/20 haven't [3] 9/12 10/21 11/19 having [1] 10/15 he [2] 6/9 6/10 he's [1] 8/20 head [1] 5/5 Health [1] 4/3 hear [1] 10/21 hearing [19]
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